THE FIVE SCHOOLS OF ISLAMIC LAW

AL - FIQH ALA AL - MADHAHIB AL - KHAMSAH

BY MUHAMMAD JAWAD MAGHNIYYAH

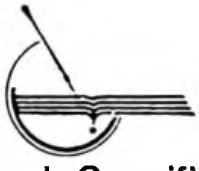
THE FIVE SCHOOLS OF ISLAMIC LAW

AL-HANAFI, AL-HANBALI, AL-JA'FARI, AL-MALIKI, AL-SHAFI'I

BY MUHAMMAD JAWAD MAGHNIYYAH

بسم الله الرحمن الرحيم

In the Name of God
the Merciful
the Compassionate



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PREFACE

The Islamic *fiqh* (jurisprudence) is divided into several sections: *'Ibādāt* (rituals) that include: ritual purity (*ṭahārah*), prayers (*ṣalāt*), fasting (*ṣawm*), alms (*zakāt*), one-fifth (*khums*) and pilgrimage (*ḥajj*). These six chapters are included in the first part of the Book *al-Fiqh 'alā al-madhāhib al-khamsah* (*Fiqh* according to five schools of Islamic Law), which was published first by Dār al-'Ilm li al-Malāyîn, achieving unprecedented circulation, that prompted this foundation to republish it for the second, third and fourth time, all of which have run out of print.

The second section of Islamic *fiqh* contains the Individual conditions (*al-'Aḥwāl al-shakhṣiyyah*), that include: marriage, divorce, will and bequest, endowment (*waqf*) and legal disability (*ḥajr*), which constitute the second part of the book published by Dār al-'Ilm li al-Malāyîn, whose copies have run out of print.

Some honourable personages suggested to the Dār to republish the two parts in one volume, of which the first part to be *'Ibādāt* and the second *al-'Aḥwāl al-Shakhṣiyyah.* The Dār has complied, as the subject of the two parts being one, by the same author. I hope that this work will be beneficial for the readers.

The Almighty Allah is the guarantor of success.

AUTHOR

The cause for the disagreement is the question whether it was said (as part of *adhān*) during the time of the Prophet (ṣ) or during that of *'Umar''*. It is stated in Ibn Qudāmah's *al-Mughnî* (3rd ed.) vol. 1, p. 408: "Isḥāq has said that this thing has been innovated by the people and Abū 'Īsā has said: 'This *tathwîb* is something that the learned (*ahl al-'ilm*) have regarded with distaste. It is that on hearing which Ibn 'Umar left the mosque.' "

10. Al-Shahîd al-Thânî, in *al-Lum'ah*, vol. 1, "bāb al-ṣalāt," *faṣl* 6, observes: "The *wujūb* of *ṣalāt al-Jumu'ah* during the occultation of the Imam is obvious in the opinion of most 'ulamā'... and if there has been no claim of *ijmā'* regarding its not being *wājib*, the opinion that it is *wājib 'aynî* would have been extremely strong. Therefore, the least that can be said is that there is an option between it (*ṣalāt al-Jumu'ah*) and the *ẓuhr* prayer, with the *Jumu'ah* (prayer) enjoying preference."

11. According to the Sunnî schools, the *Du'ā' al-'Iftitāḥ* or *Du'ā' al-'Istiftāḥ* is: سُبحانَكَ اللّٰهُمَّ وَبِحَمدِكَ وَتَبارَكَ اسمُكَ وَتَعالىٰ جَدُّكَ وَلاإلٰهَ غَيرُكَ.

12. Provided he returns within one day and one night, because in this case the journey has taken up all his day. Some others among them say: One should perform *qaṣr* if he intends to return within 10 days.

13. This is a summary from *al-Fiqh 'alā al-madhāhib al-'arba'ah.*

FASTING

Fasting in the month of Ramaḍān is one of the 'pillars' of the Islamic faith. No proof is required to establish its being obligatory (*wājib*) and one denying it goes out of the fold of Islam, because it is obvious like *ṣalāt,* and in respect of anything so evidently established both the learned and the unlettered, the elderly and the young, all stand on an equal footing.

It was declared an obligatory duty (*farḍ*) in the second year of the Hijrah upon each and every *mukallaf* (one capable of carrying out religious duties, i.e. a sane adult) and breaking it (*iftār*) is not permissible except for any of the following reasons:

1. *Ḥayḍ* and *nifās*: The schools concur that fasting is not valid for women during menstruation and puerperal bleeding.

2. Illness: The schools differ here. The Imāmīs observe: Fasting is not valid if it would cause illness or aggravate it, or intensify the pain, or delay recovery, because illness entails harm (*ḍarar*) and causing harm is prohibited (*muḥarram*). Moreover, a prohibition concerning an *'ibādah* (a rite of worship) invalidates it. Hence if a person fasts in such a condition, his fast is not valid (*ṣaḥîḥ*). A predominant likelihood of its resulting in illness or its aggravation is sufficient for refraining from fasting. As to excessive weakness, it is not a justification for *iftār* as long as it is generally bearable. Hence the extenuating cause is illness, not weakness, emaciation or strain, because every duty involves hardship and discomfort.

The four Sunnī schools state: If one who is fasting (*ṣā'im*) falls

ill, or fears the aggravation of his illness, or delay in recovery, he has the option to fast or refrain. *Iftār* is not incumbent upon him; it is a relaxation and not an obligation in this situation. But where there is likelihood of death or loss of any of the senses, *iftār* is obligatory for him and his fasting is not valid.

3. A woman in the final stage of pregnancy and nursing mothers. The four schools say: If a pregnant or nursing woman fears harm for her own health or that of her child, her fasting is valid though it is permissible for her to refrain from fasting. If she opts for *iftār,* the schools concur that she is bound to perform its *qaḍā'* later. They differ regarding its substitute (*fidyah*) and atonement (*kaffārah*). In this regard the Ḥanafīs observe: It is not at all *wājib.* The Mālikīs are of the opinion that it is *wājib* for a nursing woman, not for a pregnant one.

The Ḥanbalīs and the Shāfi'īs say: *Fidyah* is *wājib* upon a pregnant and a nursing woman only if they fear danger for the child; but if they fear harm for their own health as well as that of the child, they are bound to perform the *qaḍā'* only without being required to give *fidyah.* The *fidyah* for each day is one *mudd,* which amounts to feeding one needy person (*miskīn.*).[1]

The Imāmīs state: If a pregnant woman nearing childbirth or the child of a nursing mother may suffer harm, both of them ought to break their fast and it is not valid for them to continue fasting due to the impermissibility of harm. They concur that both are to perform the *qaḍā'* as well as give *fidyah,* equalling one *mudd,* if the harm is feared for the child. But if the harm is feared only for her own person, some among them observe: She is bound to perform *qaḍā'* but not to give *fidyah,* others say: She is bound to perform *qaḍā'* and give *fidyah* as well.

4. Travel, provided the conditions necessary for *ṣalāt al-qaṣr,* as mentioned earlier, are fulfilled as per the opinion of each school. The four Sunnī schools add a further condition to these, which is that the journey should commence before dawn and the traveller should have reached the point from where *ṣalāt* becomes *qaṣr* before dawn. Hence if he commences the journey after the setting in

of dawn, it is *ḥarām* for him to break the fast, and if he breaks it, its *qaḍā'* will be *wājib* upon him without a *kaffārah*. The Shāfi'īs add another condition, which is that the traveller should not be one who generally travels continuously, such as a driver. Thus if he travels habitually, he is not entitled to break the fast. In the opinion of the four Sunnī schools, breaking the fast is optional and not compulsory. Therefore, a traveller who fulfils all the conditions has the option of fasting or *iftār*. This is despite the observation of the Ḥanafīs that performing *ṣalāt* as *qaṣr* during journey is compulsory and not optional.

The Imāmīs say: If the conditions required for praying *qaṣr* are fulfilled for a traveller, his fast is not acceptable. Therefore, if he fasts, he will have to perform the *qaḍā'* without being liable to *kaffārah*. This is if he starts his journey before midday, but if he starts it at midday or later, he will keep his fast and in the event of his breaking it will be liable to the *kaffārah* of one who deliberately breaks his fast. And if a traveller reaches his hometown, or a place where he intends to stay for at least ten days, before midday without performing any act that breaks the fast, it is *wājib* upon him to continue fasting, and in the event of his breaking it he will be like one who deliberately breaks his fast.

5. There is consensus among all the schools that one suffering from a malady of acute thirst can break his fast, and if he can carry out its *qaḍā'* later, it will be *wājib* upon him without any *kaffārah*, in the opinion of the four schools. In the opinion of the Imāmīs, he should give a *mudd* by way of *kaffārah*. The schools differ in regard to acute hunger, as to whether it is one of the causes permitting *iftār*, like thirst. The four schools say: Hunger and thirst are similar and both make *iftār* permissible. The Imāmīs state: Hunger is not a cause permitting *iftār* except where it is expected to cause illness.

6. Old people, men and women, in late years of life for whom fasting is harmful and difficult, can break their fast, but are required to give *fidyah* by feeding a *miskīn* for each fast day omitted: similarly a sick person who does not hope to recover during the whole year. The schools concur upon this rule excepting the Ḥanbalīs, who say:

Fidyah is *mustaḥabb* and not *wājib.*

7. The Imāmīs state: Fasting is not *wājib* upon one in a swoon, even if it occurs only for a part of the day, unless where he has formed the *niyyah* of fasting before it and recovers subsequently, whereat he will continue his fast.

Disappearance of the Excuse:

If the excuse permitting *iftār* ceases--such as on recovery of a sick person, maturing of a child, homecoming of a traveller, or termination of the menses--it is *mustaḥabb* in the view of the Imāmīs and the Shāfi'īs to refrain (*imsāk*) from things that break the fast (*mufṭirāt*) as a token of respect. The Ḥanbalīs and the Ḥanafīs consider *imsāk* as *wājib,* but Mālikīs consider it neither *wājib* nor *mustaḥabb.*

Conditions (Shurūṭ) of Fasting:

As mentioned earlier, fasting in the month of Ramaḍān is *wājib* for each and every *mukallaf.* Every sane adult (*al-bāligh al-'āqil*) is considered *mukallaf.* Hence fasting is neither *wājib* upon an insane person in the state of insanity nor is it valid if he observes it. As to a child, it is not *wājib* upon him, though valid if observed by a *mumayyiz.* Also essential for the validity of the fast are Islam and *niyyah* (intention). Therefore, as per consensus, neither the fast of a non-Muslim nor the *imsāk* of one who has not formed the *niyyah* is acceptable. This is apart from the afore-mentioned conditions of freedom from menses, puerperal bleeding, illness and travel.

As to a person in an intoxicated or unconscious state, the Shāfi'īs observe: His fast is not valid if he is not in his senses for the whole period of the fast. But if he is in his senses for a part of this period, his fast is valid, although the unconscious person is liable to its *qaḍā',* whatever the circumstances, irrespective of whether his unconsciousness is self-induced or forced upon him. But the *qaḍā'* is not *wājib* upon an intoxicated person unless he is personally

responsible for his state.

The Mālikīs state: The fast is not valid if the state of unconsciousness or intoxication persists for the whole or most of the day from dawn to sunset. But if it covers a half of the day or less and he was in possession of his senses at the time of making *niyyah* and did make it, becoming unconscious or intoxicated later, *qaḍā'* is not *wājib* upon him. The time of making *niyyah* for the fast in their opinion extends from sunset to dawn.

According to the Ḥanafīs, an unconscious person is exactly like an insane one in this respect, and their opinion regarding the latter is that if the insanity lasts through the whole month of Ramaḍān, *qaḍā'* is not *wājib* upon him, and if it covers half of the month, he will fast for the remaining half and perform the *qaḍā'* of the fasts missed due to insanity.

The Ḥanbalīs observe: *Qaḍā'* is *wājib* upon a person in a state of unconsciousness as well as one in a state of intoxication, irrespective of whether these states are self-induced or forced upon them.

In the opinion of the Imāmīs, *qaḍā'* is only *wājib* upon a person in an intoxicated state, irrespective of its being self-induced or otherwise; it is not *wājib* upon an unconscious person even if his loss of consciousness is brief.

Muftirāt:

The *muftirāt* are those things from which it is obligatory to refrain during the fast, from dawn to sunset. They are:

1. Eating and drinking (*shurb*) deliberately. Both invalidate the fast and necessitate *qaḍā'* in the opinion of all the schools, though they differ as to whether *kaffārah* is also *wājib.* The Ḥanafīs and the Imāmīs require it, but not the Shāfi'īs and the Ḥanbalīs.

A person who eats and drinks by an oversight is neither liable to *qaḍā'* nor *kaffārah,* except in the opinion of the Mālikīs, who only require its *qaḍa'.*

(Included in *shurb* [drinking] is inhaling tobacco smoke)

2. Sexual intercourse, when deliberate, invalidates the fast and makes one liable to *qaḍā'* and *kaffārah,* in the opinion of all the schools.

The *kaffārah* is the manumission of a slave, and if that is not possible, fasting for two consecutive months; if even that is not possible, feeding sixty poor persons. The Imāmīs and the Mālikīs allow an option between any one of these; i.e. a *mukallaf* may choose between freeing a slave, fasting or feeding the poor. The Shāfi'īs, Ḥanbalīs and Ḥanafīs impose *kaffārah* in the above-mentioned order; i.e. releasing a slave is specifically *wājib,* and in the event of incapacity fasting becomes *wājib.* If that too is not possible, giving food to the poor becomes *wājib.*

The Imāmīs state: All the three *kaffārah*s become *wājib* together if the act breaking the fast (*muftir*) is itself *ḥarām,* such as eating anything usurped (*maghṣūb*), drinking wine, or fornicating.

As to sexual intercourse by oversight, it does not invalidate the fast in the opinion of the Ḥanafīs, Shāfi'īs and Imāmīs, but does according to the Ḥanbalīs and the Mālikīs.

3. Seminal emission (*al-'istimnā'*): There is consensus that it invalidates the fast if caused deliberately. The Ḥanbalīs say: If *madhy* is discharged due to repeated sensual glances and the like the fast will become invalid.

The four schools say: Seminal emission will necessitate *qaḍā'* without *kaffārah.*

The Imāmīs observe: It requires both *qaḍā'* and *kaffārah.*

4. Vomiting: It invalidates the fast if deliberate, and in the opinion of the Imāmīs, Shāfi'īs and Mālikīs, also necessitates *qaḍā'.* The Ḥanafīs state: Deliberate voimiting does not break the fast unless the quantity vomited fills the mouth. Two views have been narrated from Imam Aḥmad. The schools concur that involuntary vomiting does not invalidate the fast.

5. Cupping (*ḥijāmah*) is *muftir* only in the opinion of the Ḥanbalīs, who observe: The cupper and his patient both break the fast.

6. Injection invalidates the fast and requires *qaḍā'* in the opinion

of all the schools. A group of Imāmī legists observe: It also requires *kaffārah* if taken without an emergency.

7. Inhaling a dense cloud of suspended dust invalidates the fast only in the opinion of the Imāmīs. They say: If a dense suspended dust, such as flour or something of the kind, enters the body the fast is rendered invalid, because it is something more substantial than an injection or tobacco smoke.

8. Application of kohl invalidates the fast only in the opinion of the Mālikīs, provided it is applied during the day and its taste is felt in the throat.

9. The intention to discontinue the fast: If a person intends to discontinue his fast and then refrains from doing so, his fast is considered invalid in the opinion of the Imāmīs and Ḥanbalīs; not so in the opinion of the other schools.

10. Most Imāmīs state: Fully submerging the head, alone or together with other parts of the body, under water invalidates the fast and necessitates both *qaḍā'* and *kaffārah*. The other schools consider it inconsequential.

11. The Imāmīs observe: A person who deliberately remains in the state of *janābah* after the dawn during the month of Ramaḍān, his fast will be invalid and its *qaḍā'* as well as *kaffārah* will be *wājib* upon him. The remaining schools state: His fast remains valid and he is not liable to anything.

12. The Imāmīs observe: A person who deliberately ascribes something falsely to God or the Messenger (ṣ) (i.e. if he speaks or writes that God or the Messenger said so and so or ordered such and such a thing while he is aware that it is not true), his fast will be invalid and he will be liable to its *qaḍā'* as well as a *kaffārah*. A group of Imāmī legists go further by requiring of such a fabricator the *kaffārah* of freeing a slave, fasting for two months, and feeding sixty poor persons. This shows the ignorance or malice of those who say that the Imāmīs consider it permissible to forge lies against God and His Messenger (ṣ).

The Various Kinds of Fasts:

The legists of various schools classify fasts into four categories: *Wājib*, *mustaḥabb* (supererogatory), *muḥarram* (forbidden), and *makrūh* (reprehensible).

Obligatory fasts:

All the schools concur that the *wājib* fasts are those of the month of Ramaḍān, their *qaḍā'*, the expiatory fasts performed as *kaffārah*, and those performed for fulfilling a vow. The Imāmīs add further two, related to the Ḥajj and *i'tikāf*. We have already dealt in some detail with the fast of Ramaḍān, its conditions and the things that invalidate it. Here we intend to discuss its *qaḍā'* and the *kaffārah* to which one who breaks it becomes liable. Other types of obligatory fasts have been discussed under the related chapters.

Qaḍā' of the Ramaḍān Fasts:

1. The schools concur that a person liable to the *qaḍā'* of Ramaḍān fasts is bound to perform it during the same year in which the fasts were missed by him, i.e. the period between the past and the forthcoming Ramaḍān. He is free to choose the days he intends to fast, excepting those days on which fasting is prohibited (their discussion will soon follow). However it is *wājib* upon him to immediately begin their *qaḍā'* if the days remaining for the next Ramaḍān are equal to the number of fasts missed in the earlier Ramaḍān.

2. If one capable of performing the *qaḍā'* during the year neglects it until the next Ramaḍān, he should fast during the current Ramaḍān and then perform the *qaḍā'* of the past year and also give a *kaffārah* of one *mudd* for each day in the opinion of all the schools except the Ḥanafī which requires him to perform only the *qaḍā'* without any *kaffārah*. And if he is unable to perform the *qaḍā'*--such as when his illness continues throughout the period between the first

and the second Ramaḍān--he is neither required to perform its *qaḍā'* nor required to give *kaffārah* in the opinion of the four schools, while the Imāmīs say: He will not be liable to *qaḍā'* but is bound to give a *mudd* as *kaffārah* for each fast day missed.

3. If one is capable of performing the *qaḍā'* during the year but delays it with the intention of performing it just before the second Ramaḍān, so that the *qaḍā'* fasts are immediately followed by the next Ramaḍān, and then a legitimate excuse prevents him from performing the *qaḍā'* before the arrival of Ramaḍān, in such a situation he will be liable only to *qaḍā'* not to *kaffārah.*

4. One who breaks a Ramaḍān fast due to an excuse, and is capable of later performing its *qaḍā'* but fails to perform the *qaḍā'* during his lifetime, the Imāmīs observe: It is *wājib* upon his eldest child to perform the *qaḍā'* on his behalf.

The Ḥanafīs, Shāfi'īs and Ḥanbalīs state: A *ṣadaqah* of a *mudd* for each fast missed will be given on his behalf.

According to the Mālikīs, his legal guardian (*walī*) will give *ṣadaqah* on his behalf if he has so provided in the will; in the absence of a will it is not *wājib.*

5. In the opinion of the four schools, a person performing the *qaḍā'* of Ramaḍān can change his intention and break the fast both before and after midday without being liable to any *kaffārah* provided there is time for him to perform the *qaḍā'* later.

The Imāmīs observe: It is permissible for him to break this fast before midday and not later, because continuation of the fast becomes compulsory after the passing of the major part of its duration and the time of altering the *niyyah* also expires. Hence if he acts contrarily and breaks the fast after midday, he is liable to *kaffārah* by giving food to ten poor persons; if he is incapable of doing that, he will fast for three days.

Fasts of Atonement (Kaffārah):

The fasts of atonement are of various kinds. Among them are atonement fasts for involuntary homicide, fasts for atonement of a

broken oath or vow, and atonement fasts for *ẓihār*. These atonement fasts have their own rules which are discussed in the related chapters. Here we shall discuss the rules applicable to a person fasting by way of *kaffārah* for not having observed the fast of Ramaḍān.

The Shāfi'îs, Mālikîs and Ḥanafîs say: It is not permissible for a person upon whom fasting for two consecutive months has become *wājib* consequent to deliberately breaking a Ramaḍān fast to miss even a single fast during these two months, because that would break their continuity. Hence, on his missing a fast, with or without an excuse, he should fast anew for two months.

The Ḥanbalîs observe: If he misses a fast due to a legitimate excuse, the continuity is not broken.

The Imāmîs state: It is sufficient for the materialization of continuity that he fast for a full month and then a day of the next month. After that he can skip days and then continue from where he had left. But if he misses a fast during the first month without any excuse, he is bound to start anew; but if it is due to a lawful excuse, such as illness or menstruation, the continuity is not broken and he/she will wait till the excuse is removed and then resume the fasts.

The Imāmîs further observe: One who is unable to fast for two months, or release a slave or feed sixty poor persons, has the option either to fast for 18 days or give whatever he can as *ṣadaqah*. If even this is not possible, he may give alms or fast to any extent possible. If none of these are possible, he should seek forgiveness from God Almighty.

The Shāfi'îs, Mālikîs and Ḥanafîs state: If a person is unable to offer any form of *kaffārah*, he will remain liable for it until he comes to possess the capacity to offer it, and this is what the rules of the Shārî'ah require.

The Ḥanbalîs are of the opinion that if he is unable to give *kaffārah*, his liability for the same disappears, and even in the event of his becoming capable of it later, he will not be liable to anything.

The schools concur that the number of *kaffārah*s will be equal to the number of causes entailing it. Hence a person who breaks two

fasts will have to give two *kaffārah*s. But if he eats, drinks or has sexual intercourse several times in a single day, the Ḥanafīs, Mālikīs and Shāfi'īs observe: The number of *kaffārah*s will not increase if *iftār* occurs several times, irrespective of its manner.

The Ḥanbalīs state: If in a single day there occur several violations entailing *kaffārah,* if the person gives *kaffārah* for the first violation of the fast before the perpetration of the second, he should offer *kaffārah* for the latter violation as well, but if he has not given *kaffārah* for the first violation before committing the second, a single *kaffārah* suffices.

According to the Imāmīs, if sexual intercourse is repeated a number of times in a single day, the number of *kaffārah*s will also increase proportionately, but if a person eats or drinks a number of times, a single *kaffārah* suffices.

Prohibited Fasts:

All the schools except the Ḥanafī concur that fasting on the days of *'Īd al-Fiṭr* and *'Īd al-'Aḍḥā* is prohibited (*ḥarām*). The Ḥanafīs observe: Fasting on these two *'Īd*s is *makrūh* to the extent of being *ḥarām.*

The Imāmīs say: Fasting on the days of *Tashrîq* is prohibited only for those who are at Minā. The days of *Tashrîq* are the eleventh, twelfth and thirteenth of Dhū al-Ḥijjah.

The Shāfi'īs are of the opinion that fasting is not valid on the days of *Tashrîq* both for those performing Ḥajj as well as others.

According to the Ḥanbalīs, it is *ḥarām* to fast on these days for those not performing Ḥajj, not for those performing it.

The Ḥanafīs observe: Fasting on these days is *makrūh* to the extent of being *ḥarām.*

The Mālikīs state: It is *ḥarām* to fast on the eleventh and the twelfth of Dhū al-Ḥijjah for those not performing Ḥajj, not for those performing it.

All the schools excepting the Ḥanafī concur that it is not valid for a woman to observe a supererogatory fast without her husband's

consent if her fast interferes with the fulfilment of any of his rights. The Ḥanafīs observe: A woman's fasting without the permission of her husband is *makrūh*, not *ḥarām*.

The Doubtful Days:

There is consensus among the schools that *imsāk* is obligatory upon one who does not fast on a "doubtful day" (*yawm al-shakk*) that later turns out to be a day of Ramaḍān, and he is liable to its *qaḍā'* later.

Where one fasts on a doubtful day that is later known to have been a day of Ramaḍān, they differ as to whether it suffices without requiring *qaḍā'*.

The Shāfi'ī, Mālikī and Ḥanbalī schools observe: This fast will not suffice and its *qaḍā'* is *wājib* upon him.

In the opinion of the Ḥanafīs, it suffices and does not require *qaḍā'*.

Most Imāmīs state: Its *qaḍā'* is not *wājib* upon him, except when he had fasted with the *niyyah* of Ramaḍān.

Supererogatory Fasts:

Fasting is considered *mustaḥabb* on all the days of the year except those on which it has been prohibited. But there are days whose fast has been specifically stressed and they include three days of each month, preferably the 'moonlit' days (*al-'ayyām al-bīḍ*), which are the thirteenth, fourteenth and fifteenth of each lunar month. Among them is the day of 'Arafah (9th of Dhū al-Ḥijjah). Also emphasized are the fasts of the months of Rajab and Sha'bān. Fasting on Mondays and Thursdays has also been emphasized. There are other days as well which have been mentioned in elaborate works. There is consensus among all the schools that fasting on these days is *mustaḥabb*.

Reprehensible (Makrūh) Fasts:

It is mentioned in *al-Fiqh 'alā al-madhāhib al-'arba'ah* that it is *makrūh* to single out Fridays and Saturdays for fasting. So is fasting on the day of *Now Rūz* (21st March) in the opinion of all the schools except the Shāfi'ī, and fasting on the day or the two days just before the month of Ramaḍān.

It has been stated in Imāmī books on fiqh that it is *makrūh* for a guest to fast without the permission of his host, for a child to fast without the permission of its father, and when there is doubt regarding the new moon of Dhū al-Ḥijjah and the consequent possibility of the day being that of *'Īd.*

Evidence of the New Moon:

There is a general consensus among Muslims that a person who has seen the new moon is himself bound to act in accordance with his knowledge, whether it is the new moon of Ramaḍān or Shawwāl. Hence it is *wājib* upon one who has seen the former to fast even if all other people don't,[2] and to refrain from fasting on seeing the latter even if everyone else on the earth is fasting, irrespective of whether the observer is *'ādil* or not, man or woman. The schools differ regarding the following issues:

1. The Ḥanbalīs, Mālikīs and Ḥanafīs state: If the sighting (*ru'yah*) of the new moon has been confirmed in a particular region, the people of all other regions are bound by it regardless of the distance between them; the difference of the horizon of the new moon is of no consequence.

The Imāmīs and the Shāfi'īs observe: If the people of a particular place see the new moon while those at another place don't, in the event of these two places being closeby with respect to the horizon, the latter's duty will be the same; but not if their horizons differ.

2. If the new moon is seen during day, either before or after midday, on 30th Sha'bān, will it be reckoned the last day of Sha'bān

(in which case, fasting on it will not be *wājib*) or the first of Ramaḍān (in which case fasting is *wājib*)? Similarly, if the new moon is seen during the day on the 30th of Ramaḍān, will it be reckoned a day of Ramaḍān or that of Shawwāl? In other words, will the day on which the new moon is observed be reckoned as belonging to the past or to the forthcoming month?

The Imāmīs, Shāfi'īs, Mālikīs and Ḥanafīs observe: It belongs to the past month and not to the forthcoming one. Accordingly, it is *wājib* to fast on the next day if the new moon is seen at the end of Sha'bān, and to refrain from fasting the next day if it is seen at the end of Ramaḍān.

3. The schools concur that the new moon is confirmed if sighted, as observed in this tradition of the Prophet (ṣ): صوموالرُ ؤيَته، وَأفطر وا لرُؤيَته. ('Fast on seeing the new moon and stop fasting on seeing it'). They differ regarding the other methods of confirming it.

The Imāmīs observe: It is confirmed for both Ramaḍān and Shawwāl by *tawātur* (i.e. the testimony of a sufficiently large number of people whose conspiring over a false claim is impossible), and by the testimony of two *'ādil* men, irrespective of whether the sky is clear or cloudy and regardless of whether they belong to the same or two different nearby towns, provided their descriptions of the new moon are not contradictory. The evidence of women, children, *fāsiq* men and those of unknown character is not acceptable.

The Ḥanafīs differentiate between the new moons of Ramaḍān and Shawwāl; they state: The new moon of Ramaḍān is confirmed by the testimony of a single man and a single woman, provided they are Muslim, sane and *'ādil.* The Shawwāl new moon is not confirmed except by the testimony of two men or a man and two women. This is when the sky is not clear. But if the sky is clear--and there is no difference in this respect between the new moon of Ramaḍān and Shawwāl--it is not confirmed except by the testimony of a considerable number of persons whose reports result in certainty.

In the opinion of the Shāfi'īs, the new moon of Ramaḍān and Shawwāl is confirmed by the testimony of a single witnesss provided he is Muslim, sane, and *'ādil.* The sky's being clear or cloudy makes

no difference in this regard.

According to the Mālikīs, the new moon of Ramaḍān and Shawwāl is not confirmed except by the testimony of two *'ādil* men, irrespective of the sky's being cloudy or cloudless.

The Ḥanbalīs say: The new moon of Ramaḍān is confirmed by the testimony of an *'ādil* man or woman, while that of Shawwāl is only confirmed by the testimony of two *'ādil* men.

4. There is consensus among the schools, excepting the Ḥanafī, that if no one claims to have seen the new moon of Ramaḍān, fasting will be *wājib* after the thirtieth day allowing thirty days for Sha'bān. According to the Ḥanafīs, fasting becomes *wājib* after the twenty-ninth day of Sha'bān.

This was with respect to the new moon of Ramaḍān. As to the new moon of Shawwāl, the Ḥanafīs and the Mālikīs observe: If the sky is cloudy, thirty days of Ramaḍān will be completed and *iftār* will be *wājib* on the following day. But if the sky is clear, it is *wājib* to fast on the day following the thirtieth day by rejecting the earlier testimony of witnesses confirming the first of Ramaḍān regardless of their number.

The Shāfi'īs consider *iftār* as *wājib* after thirty days even if the setting in of Ramaḍān was confirmed by the evidence of a single witness, irrespective of the sky's having been cloudy or clear.

According to the Ḥanbalīs, if the setting in of Ramaḍān was confirmed by the testimony of two *'ādil* men, *iftār* following the thirtieth day is *wājib,* and if it was confirmed by the evidence of a single *'adl,* it is *wājib* to fast on the thirty-first day as well.

In the opinion of the Imāmīs, both Ramaḍān and Shawwāl are confirmed after the completion of thirty days regardless of the sky's being cloudy or clear, provided their beginning was confirmed in a manner approved by the Sharī'ah.

The New Moon and Astronomy:

This year (1960) the governments of Pakistan and Tunisia have decided to rely upon the opinion of astronomers for the

confirmation of the new moon with a view of putting an end to confusion[3] and the general inconvenience resulting from not knowing in advance the day of *'Īd*, which at times comes as a surprise, and at other times is delayed despite all the preparations.

This decision of the two governments has become an issue of heated controversy in religious circles.

The protagonists of the move observe that there is nothing in the religion that disapproves of reliance on the opinion of astronomers; rather it is supported by this verse of *Sūrat al-Naḥl*:

وَعَلَٰمَٰتٍ وَبِالنَّجْمِ هُمْ يَهْتَدُونَ ﴿١٦﴾

...And way marks; and by the stars they are guided. (16:16)

The antagonists state: The decision contradicts the above-mentioned prophetic traditon: صوموالرُؤيَته، وأفطروالرُؤيَته. That, because the word *ru'yah* (sighting) implies sighting the moon with the eyes, which was common among the people during the time of the Prophet (ṣ). As to using a telescope or relying on astronomical calculations, they are inconsistent with the literal import of the tradition, they point out.

In fact, none of the sides has advanced sound reasons, because 'guidance by the stars' implies determination of land and sea routes with the help of the stars, and not determination of days of months and new moons. As to the tradition, it does not contradict sound scientific knowledge, because 'seeing' is a means for acquiring knowledge and not an end in itself, as is the case with any means that helps confirm facts. However, in my opinion, the judgements of astronomers do not lead to certain knowledge, nor do they remove all doubts as removed by vision, because their judgements are based on probability not on certainty. This is evident from their divergent judgements about the night of the new moon as well as the time of its occurrence and the period that it remains (above the horizon).

If a time comes when the astronomers attain accurate and sufficient knowledge, so that there is consensus among them and

they recurringly prove to be right to the extent that their forecasts become a certainty like the days of the week, then it will be possible to rely upon them. Rather, then it will be obligatory to follow their judgements and to reject everything that goes against them.[4]

NOTES:

1. Approximately 800 grams of wheat or something similar to it.

2. But the Ḥanafīs observe: If he testifies before a *qāḍī* who rejects his testimony, it is *wājib* upon him to perform its *qaḍā'* without liability to *kaffārah* (*al-Fiqh 'alā al-madhāhib al-'arba'ah*).

3. In 1939 the *'Īd al-'Aḍḥā* was observed on Monday in Egypt, on Tuesday in Saudi Arabia, and on Wednesday in Bombay.

4. Refer to the discussion on this issue in the first volume of our book *Fiqh al-'Imām Ja'far al-Ṣādiq* (*'a*), the section on the proof of the new moon at the end of *bāb al-ṣawm*.

ZAKAT AND KHUMS

Zakāt is of two kinds: on property and on individuals. The schools concur that payment of *zakāt* is not valid without *niyyah*. Its obligation depends on the following conditions:

Conditions for Zakāt on Property:

1. The Ḥanafîs and the Imāmîs observe: Sanity and adulthood are necessary for liability to *zakāt;* hence the property of a child or an insane person is not liable to it.[1]

The Mālikîs, Ḥanbalîs and Shāfi'îs state: Neither sanity nor adulthood is required; it is *wājib* on the property of a minor as well as an insane person and the guardian is responsible for its payment from his ward's property.

2. The Ḥanafîs, Shāfi'îs and Ḥanbalîs say: *Zakāt* is not *wājib* upon a non-Muslim (*al-Fiqh 'alā al-madhāhib al-'arba'ah*). According to the Imāmîs and the Mālikîs, a non-Muslim is as liable to it as a Muslim, without there being any difference.

3. Complete ownership is necessary for the incidence of *zakāt*. Every school has elaborate discussions concerning the definition of 'complete ownership.' What is common in their observations is that the owner should have complete control over the property and must be able to dispense it at his will. Hence lost property or property usurped from its owner--though he will retain its ownership--will not be liable to *zakāt*. As to debt, it will be liable to *zakāt* only after the creditor has recovered it (for example, the wife's dower owed by the

husband), for a debt is not possessed unless collected. The rule applicable to the debtor will be discussed later.

4. A lunar year of uninterrupted possession for property other than grain, fruits and minerals. Details are given below.

5. The possession of a certain minimum (*niṣāb*) which differs with the kind of property liable to *zakāt,* as will be explained later.

6. Is a debtor who possesses property to the extent of the *niṣāb* liable to *zakāt*? In other words, does debt prevent liability to *zakāt*?

The Imāmîs and the Shāfi'îs state: The property's freedom from debt is not a condition; hence a debtor will be liable to *zakāt* even if the debt covers his entire property equalling the *niṣāb.* Rather, the Imāmîs say: If one borrows something on which *zakāt* is payable, in a quantity equalling its *niṣāb* and it remains in his possession for a year, the borrower shall be liable to *zakāt.*

According to the Ḥanbalîs, debt prevents liability to *zakāt.* Hence a debtor who possesses property should first meet his debt; he will pay *zakāt* if the remainder reaches the *niṣāb* limit, not otherwise.

The Mālikîs are of the opinion that debt prevents the incidence of *zakāt* on gold and silver, not on grain, livestock and minerals. Therefore a debtor possessing gold and silver in the quantity of *niṣāb* is supposed to meet the debt, and *zakāt* is not *wājib* upon him. But if the debtor possesses something other than gold and silver in the quantity of the *niṣāb,* he is liable to *zakāt.*

The Ḥanafîs observe: If the debt is a duty owed to God (*ḥaqq Allāh*), such as the obligation of ḥajj and *kaffārah,* and persons have no claims against him, such a debt does not prevent liability to *zakāt.* But if the debt is owed to persons or to God when there is such a claim against him as outstanding *zakāt* whose payment is demanded by the ruler (*imām*), such a debt prevents liability to *zakāt* on all kinds of property except crops of the field and fruits.

All the schools concur that ornaments, jewelry, one's dwelling, clothes, household articles, mount, weapons and other things of personal use such as instruments, books and tools are not liable to *zakāt.* The Imāmîs also exclude gold and silver ingots. Related details are given below.

Kinds of Property Liable to Zakāt:

The Noble Qur'ān considers the needy as real sharers in the wealth of the rich. Verse 19 of *Sūrat al-Dhāriyāt* states:

وَفِيٓ أَمۡوَٰلِهِمۡ حَقّٞ لِّلسَّآئِلِ وَٱلۡمَحۡرُومِ ﴿١٩﴾

And in their possessions is a share for the beggar and the deprived. (51:19)

The verse does not differentiate between wealth acquired through agriculture, industry or trade in respect of this right, and hence the legists of all the schools acknowledge it as *wājib* in livestock, grain, fruits, currency and minerals.

However, they differ in delimiting some of these categories, in specifying the *niṣāb* applicable to some of them, and the size of the share of the needy in some others. Thus the Imāmīs consider it *wājib* to pay one-fifth (*khums*) from the profits of trade, while the four schools prescribe one-fortieth (2 1/2%) on merchandise. The same applies to minerals, from which the Ḥanafīs, Imāmīs and Ḥanbalīs prescribe payment of *khums* while the remaining two schools that of 2 1/2%. The following description gives the details of the points of agreement and difference of the schools.

Zakāt on Livestock:

There is a consensus that *zakāt* is *wājib* upon three kinds of livestock: camels, cattle, sheep and goats. They concur that *zakāt* is not *wājib* upon horses, mules and donkeys, except when they form a part of merchandise. The Ḥanafīs consider horses to be liable to *zakāt* only when these include mares.

Conditions for Zakāt on Livestock:

There are four conditions for the incidence of *zakāt* on livestock:

1. The Niṣāb: The *niṣāb* of camels is as follows:

If the number of camels is 5, one sheep; if it reaches 10, two sheep; for 15, three sheep; and for 20, four. All the schools agree on this prescription. But if the number of camels reaches 25, the *zakāt* according to the Imāmîs is 5 sheep, and a camel in its second year according to the other four schools. However, the Imāmîs consider that as *zakāt* of 26 camels; thus if the number of camels reaches this limit they form a single *niṣāb.*

The schools concur that the *zakāt* of 36 camels, is a camel in its third year; of 46 camels, a camel in its fourth year; of 61 camels, a camel in its fifth year; of 76 camels, two camels in their third year; of 91 camels, two camels in their fourth year.

The schools also concur that there is no additional *zakāt* for camels over 91 and below 121. For this number the different opinions of the schools and their details can be found in elaborate works.

There is consensus that there is no *zakāt* on less than 5 camels, as well as on the number above a particular *niṣāb* and below the next *niṣāb.*

Niṣāb of Cattle: The *zakāt* for every 30 cattle is a *tabî'* o r *tabî'ah* (an ox or cow in its second year); for every 40, a *musinnah* (cow in its third year). Thus for 60, the *zakāt* is two *tabî'*s; for 70, one *tabî'* and one *musinnah;* for 80, two *musinnah*s; for 90, three *tabî'*s; for 100, two *tabî'*s and one *musinnah;* for 110, two *musinnah*s and one *tabî';* for 120, three *musinnah*s, or four *tabî'*s, and so on. No *zakāt* is levied on a number which exceeds a certain limit but falls short of the next higher limit. All the schools concur regarding the above-mentioned *niṣāb.*[2] *Tabî'* is a cow which has completed a year and entered the second, and *musinnah* is one which has entered the third year. The Mālikîs define *tabî'* as one which has completed two years and entered the third, and *musinnah* as one which has completed three years and entered the fourth.

The Niṣāb of Sheep: The schools concur that the *zakāt* for 40 sheep is one sheep; for 121, two; for 201, three.

The Imāmîs state: If their number reaches 301, the *zakāt* is four

sheep up to 400; from then on for each extra 100 the *zakāt* is one sheep.

The four Sunnī schools observe: The *zakāt* for 301, like that for 201, is three sheep up to 400, on which four sheep become due; thereafter for each extra 100 the *zakāt* is one sheep.

There is consensus among the schools that a number between any two limits is exempt from *zakāt.*

2. Grazing: 'Grazing livestock' is that which grazes freely on public pastures for most of the year and whose owner does not bear the cost of providing it with grass except rarely. This is a condition on which all the schools excepting the Mālikī concur. The Mālikīs levy *zakāt* on both 'grazing' and 'non-grazing' livestock.

3. One Year of Ownership: All the livestock in the *niṣāb* should be owned by its owner for a complete lunar year. Thus if its number falls short of the *niṣāb* even by one during the year, it will not be liable to *zakāt* even if the *niṣāb* materializes at the end of the year (e.g. if a person owns 40 sheep at the beginning of the year and after a few months their number is reduced by one for some reason, such as sale, gift or death, and later becomes 40 again, *zakāt* will not be levied at the end of the year). The Imāmīs, Shāfi'īs and Ḥanbalīs concur regarding this condition, while the Ḥanafīs observe: If the number falls below the *niṣāb* during the year but is resumed at the end of it, *zakāt* will be levied as if the *niṣāb* had existed throughout the year.

4. The animals should not be those intended for work, such as an ox used for tilling or a camel for transport. Hence there is consensus among the schools, excepting the Mālikī, that *zakāt* is not levied on animals used for work, irrespective of their number. According to the Mālikīs, *zakāt* is levied on both working as well as other animals without any difference.

The schools concur that if a person possesses many kinds of livestock of which no single kind reaches the number required for *niṣāb,* it is not *wājib* upon him to consider them jointly (thus if he has less than 30 cattle and less than 40 sheep, it is not *wājib* to make up the *niṣāb* of the cattle with the sheep or vice versa).

The schools differ where two persons jointly own a single *niṣāb.*

The Imāmīs, Ḥanafīs and Mālikīs state: They are not liable to *zakāt,* together or singly, unless the share of each one of them separately reaches the *niṣāb* limit. The Shāfi'īs and the Ḥanbalīs observe: Wealth owned jointly is liable to *zakāt* if it reaches the *niṣāb* limit, even if each share falls short of it.

Zakāt on Gold and Silver:

The legists prescribe *zakāt* on gold and silver if their respective *niṣāb*s are reached. According to them the *niṣāb* of gold is 20 *mithqāl* (4.8 grams) and that of silver 200 dirhams (2.52 grams). They further require that the *niṣāb* be owned for one complete year. The rate of *zakāt* on these two is 2 1/2%.

The Imāmīs observe: *Zakāt* is *wājib* on gold and silver coins used as money, not on ingots or jewellery.

The four Sunnī schools concur that *zakāt* is *wājib* on gold and silver ingots in the same manner as on money coined from them. They differ regarding *zakāt* on jewellery made of them; some consider it *wājib,* others don't.

The above remarks concerning *zakāt* on gold and silver coins will suffice, for they have practically no role in our times. As to bank-notes, the Imāmīs prescribe the payment of one-fifth (*khums*) of the surplus left after a year's expenses. Details are given below.

The Shāfi'īs, Mālikīs and Ḥanafīs state: *Zakāt* is not *wājib* on bank-notes unless all the conditions including *niṣāb* and the completion of a year are fulfilled.

The Ḥanbalīs say: *Zakāt* is not *wājib* on bank-notes except when converted into gold or silver.

Zakāt on Crops and Fruits:

The schools concur that the rate of *zakāt* on crops of the field and fruits is 10% if irrigated by rain or riverwater, and 5% if irrigated by Artesian wells and the like.

There is also consensus among the schools, excepting the

Ḥanafī, that the *niṣāb* for crops and fruits is 5 *wasq* (60 *ṣā'*, approx. 910 kg). There is no *zakāt* under this limit. The Ḥanafīs prescribe *zakāt* irrespective of the quantity of the produce.

The schools differ regarding the kinds of crops and fruits on which *zakāt* is *wājib*. The Ḥanafīs prescribe *zakāt* on all fruits and crops and all agricultural produce except wood, hay and Persian cane.

The Mālikīs and the Shāfi'īs prescribe *zakāt* on everything that is stored as a provision, such as wheat, barley, rice, dates and raisins.

The Ḥanbalīs require *zakāt* on everything that is weighed and stored from among fruits and grains.

The Imāmīs do not levy *zakāt* on anything except wheat and barley among grains, and dates and raisins from among fruits. Apart from these, it is *mustaḥabb,* not *wājib*.

Zakāt on Merchandise:

'Merchandise' (*māl al-tijārah*) consists of property whose ownership is acquired through commercial transactions made for profit. It is necessary here that the ownership be acquired through the owner's own activity; hence, if acquired through inheritance, there is consensus that it will not be considered merchandise.

According to the four Sunnī schools, *zakāt* is *wājib* on merchandise. The Imāmīs consider it *mustaḥabb*. The *zakāt* is paid from the price of the commodities of trade at the rate of 2 1/2%.

The schools concur that a year's passage is necessary for the incidence of *zakāt*. It is considered to begin from the time commercial transactions commence. When a year passes and profit is made, *zakāt* becomes payable.

The Imāmīs observe: The capital should remain undiminished throughout the year. Thus if it is reduced during the year, *zakāt* will not be levied. When restored, the new year will be reckoned from the date of recovery.

According to the Shāfi'īs and the Ḥanbalīs, the criterion for liability to *zakāt* is only the position at the end of year. Thus if the *niṣāb* is not reached at the beginning of the year or during it but only

at its end, *zakāt* becomes *wājib.*

The Ḥanafīs state: The criterion is the position at the beginning and the end of the year not what happens in its middle. Thus if at the beginning of the year a person owns merchandise fulfilling the *niṣāb* and its value falls below this limit during the year recovering to reach the limit at the end of the year, he will be liable to *zakāt.* But if the *niṣāb* is not reached either at the year's beginning or end, *zakāt* will not be levied.

Also, the value of merchandise should reach the *niṣāb,* On evaluation its total value will be compared with the *niṣāb*s of gold and silver; *zakāt* will be levied if it equals or exceeds any of them, not if it is less than the *niṣāb* of silver. The authors of *al-Fiqh 'alā al-madhāhib al-'arba'ah* (1922) calculate this *niṣāb* as 529.2/3 Egyptian piasters.

The Character of Liability:

The schools differ as to whether *zakāt* pertains to the property itself that is liable to *zakāt,* so that one entitled to receive it has a share in it together with the owner (like all property owned jointly by partners), or if it is a personal liability like other debts, though it pertains to a specific property, like the debt pertaining to the legacy of a deceased person.

The Shāfi'īs, Imāmīs and Mālikīs state: *Zakāt* is *wājib* upon the zakātable property itself and its recipient is a real co-sharer in it with the owner in accordance with the statement of God, the Most High:

﴿وَفِيٓ أَمۡوَٰلِهِمۡ حَقّٞ لِّلسَّآئِلِ وَٱلۡمَحۡرُومِ ١٩﴾

And in their wealth is a share for the beggar and the deprived. (51:19)

They point out that there is also a *tawātur* of traditions stating that God has made the rich and the poor partners in wealth. However, the Sharī'ah has out of lenience permitted the owner to pay *zakāt* out of his other assets not subject to *zakāt.*

The Ḥanafîs observe: The incidence of *zakāt* pertains to the property subject to *zakāt* itself. It is like the claim of a mortgagor over mortgaged property and is not met except by being handed over to the recipient.

Two views have been narrated from Imam Aḥmad, one of which agrees with the Ḥanafî position.

Classes Entitled to Receive Zakāt:

The schools concur that there are eight different classes of those who deserve to receive *zakāt* as mentioned in the following verse of *Sūrat al-Tawbah:*

إِنَّمَا الصَّدَقَٰتُ لِلْفُقَرَآءِ وَالْمَسَٰكِينِ وَالْعَٰمِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِى الرِّقَابِ وَالْغَٰرِمِينَ وَفِى سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ...

The ṣadaqāt are for the poor (fuqarā') and the needy (masākîn), their collectors ('āmilîn), those whose hearts are to be conciliated (mu'allafatu qulūbuhum), the ransoming of slaves (riqāb), debtors (ghārimîn), in God's way (sabîl Allāh), and the traveller (ibn al-sabîl)...(9:60)

The views of the schools in determining these classes are as follows:

1. The Needy (Faqīr): According to the Ḥanafîs, *'faqîr'* is someone who owns less than the *niṣāb* even if he is physically fit and earning. As to one who owns any property equal to the *niṣāb* of its category after providing for his basic needs--such as house, articles, clothes, and etc.--it is not valid to spend *zakāt* on him. The proof they offer is that *zakāt* becomes *wājib* upon one who owns assets equal to the *niṣāb* of anything and one who is himself liable to *zakāt* cannot receive it.

According to the other schools, the criterion is need, not ownership; *zakāt* is *ḥarām* for a needy person although he may own one or several *niṣāb*s, because the word *'faqr'* means need. God, the Exalted, says:

يَأَيُّهَاالنَّاسُ أَنتُمُ الفُقَرَآءُ إِلَى اللهِ...

O men, you are the ones that have need of God. (35:15)

The Shāfi'îs and the Ḥanbalîs say: One who possesses half of what suffices him will not be considered *faqîr;* consequently it is not permissible for him to receive *zakāt.*

According to the Imāmîs and the Mālikîs, *'faqîr'* in the context of the Sharî'ah is one who does not possess a year's provision for himself and his family. Thus one who owns property or livestock not sufficient to provide his family for a whole year can be given *zakāt.*

The Imāmîs, Shāfi'îs and Ḥanbalîs further observe: It is not permissible for one capable of earning to receive *zakāt.*

The Ḥanafîs and the Mālikîs permit him to receive *zakāt* and it may be given to him.

The Imāmîs state: One's claim to be *faqîr* will be accepted without requiring a witness or an oath, provided he has no visible wealth and the falsehood of his claim is not known. This is because once two men came to the Prophet (ṣ) while he was distributing *ṣadaqāt* and asked him to give them something from it. The Prophet (ṣ) lifted his eyes and fixing his glance on them said: "If you like I will give it to you, for there is no share in it for one who is well provided or one who makes an earning." Thus he left it to them to benefit from *zakāt* without requiring witness or oath.

2. Al-Miskîn: The Imāmîs, Ḥanafîs and Mālikîs consider *'miskîn'* to be one who is worse off than a *faqîr* person.

The Ḥanbalîs and the Shāfi'îs, however, define *faqîr* as someone worse off than a *miskîn* because, they say, *'faqîr'* is one who has nothing or lacks even half of what he needs, while *'miskîn'* is one who possesses more than half of what he needs, and he is provided the other half from *zakāt.*

Whatever be the case, there is no essential difference between the schools in their interpretation of the terms *'faqîr'* and *'miskîn,'* for the objective is that *zakāt* be used to fulfil the urgent need for housing, food, clothing, medical care, education, and such other

needs.

The schools, excepting the Mālikī, also concur that it is not permissible for one liable to *zakāt* to give it to his parents, grandparents, children, grandchildren or wife. The Mālikîs allow its payment to grandparents and grandchildren because their maintenance is not one's obligation in their opinion.

There is also consensus that it is valid to give *zakāt* to brothers, uncles and aunts. However, the prohibition on giving of *zakāt* to one's father and children pertains only to the share meant for the two classes of the needy (*fuqarā'* and *masākîn*). Hence if they belong to a class other than these two, they are permitted to receive it, e.g. if the father or the son is a warrior fighting in the way of God, or one of 'those whose hearts are to be conciliated,' or a debtor whose debt arises out of a legitimate act, or one involved in a case of peacemaking, or a collector of *zakāt,* because these classes of recipients are entitled to receive *zakāt* even if they are well off (Al-'Allāmah al-Ḥillî, *al-Tadhkirah,* vol. 1, "Bāb al-Zakāt").

However, it is preferable to give *zakāt* to a relative whose maintenance is not *wājib* upon the giver.

The schools differ regarding the transfer of *zakāt* from one town to another. The Ḥanafîs and the Imāmîs observe: It is preferable and more meritorious to spend the *zakāt* on the residents of the town except where some urgent need necessitates its transfer to another place.

The Shāfi'îs and the Mālikîs do not permit the transfer of *zakāt* from one town to another.

The Ḥanbalîs allow its transfer to a place at a distance where *ṣalāt* does not become *qaṣr* on one making the journey, and forbid its transfer beyond that distance.

3. ('Āmilūn): As per consensus, by *'āmilūn 'alayhā'* in the verse is meant the collectors of *zakāt.*

4. Al-Mu'allafatu qulūbuhum: They are those who are won over by paying a part of *zakāt* in the interest of Islam. The schools differ as to whether this category still holds or if it has been abrogated, and if not abrogated whether this winning over is restricted to

non-Muslims or includes Muslims of weak conviction as well.

The Ḥanafîs observe: This principle was introduced in the Sharî'ah at the advent of Islam when the Muslims were weak. But now, when Islam has become firmly established, this provision has no applicability due to the absence of its cause.

The other schools have elaborately discussed the different kinds of 'those whose hearts are to be conciliated,' and their observations may be summarized as follows: The regulation holds and has not been abrogated; the share of *zakāt* pertaining to *al-mu'allafatu qulūbuhum* can be given to a Muslim as well as a non-Muslim, on condition that this bestowal secures the advantage of Islam and Muslims. The Prophet (ṣ) gave *zakāt* to Ṣafwān ibn Umayyah, who was an idolater, and to Abū Sufyān and his like, after they embraced Islam, as a measure of precaution to safeguard Islam and Muslims from their malice.

5. Al-Riqāb: It implies the buying of slaves with *zakāt* funds to set them free. This provision clearly shows that Islam devised numerous ways to end slavery. In any case, this provision has no practical application in our times.

6. Al-Ghārimūn: They are the debtors who have fallen in debt for some non-sinful cause. The schools concur that they may be given *zakāt* to help them repay their debts.

7. Sabîl Allāh: The four Sunnî schools consider it to imply those warriors who have volunteered to fight for the defence of Islam.

The Imāmîs observe: Apart from warriors, this category includes building of mosques, hospitals, schools and other public works.

8. Ibn al-Sabîl: It means a traveller cut off from his hometown and means. Hence it is valid to give him *zakāt* to an extent that will enable him to reach his hometown.

Subsidiary Issues:

1. The schools concur that it is *ḥarām* for one belonging to the Banū

Hāshim to receive *zakāt* from someone who is not a Hāshimite himself. But he may receive *zakāt* from a Hāshimite.

2. Is it permissible to give one's entire *zakāt* to a single *miskîn*?

The Imāmîs permit it even if it makes the recipient well off by being given all at once.

The Ḥanafîs and the Ḥanbalîs state: It may be given to a single person if this does not make him sufficiently provided.

The Mālikîs permit giving of one's entire *zakāt* to a single recipient provided he is not a collector of *zakāt*, because he may not take more than the remuneration of his work.

The Shāfi'îs are of the opinion that it is obligatory to so spread out the *zakāt* as to include all the eight categories, if they exist; in the absence of some of them it should be distributed among the categories present. A minimum of three persons from each category should receive it.

3. The property liable to *zakāt* is of two types. First, that which is possessed for a year, such as livestock and merchandise. In this case, *zakāt* does not become obligatory before the completion of a year. A 'year' in the opinion of the Imāmîs means eleven months of possession of the property liable to *zakāt* and the setting in of the twelfth month.

The second type does not require the passage of a year, such as fruits and grains, and *zakāt* becomes *wājib* upon them at the time of harvest. As to the time of payment, there is consensus that it is when the fruits are gathered and dried in the sun, and when the crop is harvested and the straw and husk removed. One who delays taking out the *zakāt* after its time has arrived and its payment has become possible is a sinner (though he remains liable to it), because he has delayed the carrying out of a time-bound obligation and been negligent.

Zakāt al-Fiṭr:

Zakāt al-fiṭr is also called *'zakāt al-'abadān* (the *zakāt* of the bodies). Its pertinent issues include the following questions: by

whom it is to be paid? for whom? what is its quantity, its time of payment, and who are its eligible recipients.

Those on Whom it is Wājib:

The four Sunnî schools state: *Zakāt al-fiṭr* is *wājib* upon every financially capable (*qādir*) Muslim, major or minor. Thus it is *wājib* for a guardian to pay it out from the property of his ward to the needy.

A financially capable person in the opinion of the Ḥanafîs is one who owns property equal to a *niṣāb* of *zakāt* or something equal in value after meeting all his needs. According to the Shāfi'îs, Mālikîs and Ḥanbalîs, it is one who possesses anything in excess of his and his family's food on the day and night of the *'îd,* apart from such essential needs as house, clothes and other necessities. The Mālikîs add: One who is capable of borrowing will be considered capable if he hopes to repay it.

According to the Imāmîs, *zakāt al-fiṭr* is *wājib* only upon a capable sane adult. Therefore it is not *wājib* on a child's property or that of an insane person in accordance with the tradition:

رُفِعَ القَلَمُ عَن ثَلاثَةٍ: عَنِ الصَّبِيِّ حَتّىٰ يَحتَلِمَ، وَعَنِ المَجنونِ حتّىٰ يَفيقَ، وَعَنِ النّائِمِ حَتّىٰ يَستَيقِظَ

The (lawgiver's) pen has absolved these three of obligations: a child, till he reaches the age of puberty; an insane person, until he regains sanity; and a person in sleep, until he wakes up.

A financially capable person in their opinion is one who possesses, either actually or potentially, a year's provision for himself and his family--such as when he possesses an asset that he can utilize or a skill by which he can earn.

The Ḥanafîs observe: It is *wājib* for a capable person to pay the *zakāt al-fiṭr* for himself, his minor children, his servant, and his major child if he happens to be insane. But if the major child is sane,

his *zakāt* is not *wājib* upon the father. Also the wife's *zakāt* is not *wājib* upon the husband.

The Ḥanbalīs and the Shāfi'īs consider it *wājib* to pay the *zakāt al-fiṭr* for oneself as well as those whose maintenance is *wājib* upon one, such as wife, father and son.

The Mālikīs say: It is *wājib* for oneself and for those one is maintaining; they include: one's indigent parents; sons, who have no means of their own, provided they are still young and incapable of earning themselves; indigent daughters who have not yet been married; and wife.

The Imāmīs state: It is *wājib* to pay *zakāt al-fiṭr* for oneself and for all those whom one feeds on the night of *'îd al-fiṭr,* irrespective of whether their maintenance is *wājib* upon one or not, and regardless of their being children or adults, Muslims or non-Muslims, relatives or strangers. Hence if a guest comes to his house moments before the new moon for the month of Shawwāl is sighted and joins the family, it becomes *wājib* to pay *zakāt al-fiṭr* for him as well. Similarly, if a child is born to him or he marries before or at the time of sunset preceding the night of *'îd al-fiṭr.* But if the child is born, or he marries, or a guest arrives, after sunset, it will not be *wājib* to pay the *fiṭrah* for them. Anyone whose *fiṭrah* is *wājib* upon another is not required to pay his own *fiṭrah* even if he is wealthy.

Its Quantity:

The schools, excepting the Ḥanafī, concur that the *wājib* quantity of *fiṭrah* per head is one *ṣā'* (approx. 3 kg) or wheat, barley, dates, raisins, rice, maize or any other staple crop. The Ḥanafīs consider half a *ṣā'* of wheat per head as sufficient.

Time of Wujūb:

The Ḥānafīs observe: Its *wujūb* commences from the dawn of the day of *'îd* and continues till the end of life, because *zakāt al-fiṭr* is among those obligations which do not have a time limit and it is

valid to pay it early or late.

The Ḥanbalîs say: It is *ḥarām* to delay its payment beyond the day of *'îd* and it may be paid two days before the *'îd*, though not earlier.

The Shāfi'îs state: The time of its *wujūb* extends from the last part of Ramaḍān (i.e. from a little before sunset on the last day of Ramaḍān) up to the first part of Shawwāl. It is *sunnah* to set it aside during the early part of the day of *'îd* and *ḥarām* to delay it beyond the sunset of the day without an excuse.

There are two narrations from Imām Mālik, and in accordance with one of them its *wujūb* commences from sunset on the last day of Ramaḍān.

The Imāmîs observe: *Zakāt al-fiṭr* becomes *wājib* with the falling of the night of the *'îd,* and its payment is *wājib* from sunset up to noon on the day of *'îd;* it is meritorious to pay it before *ṣalāt al-'îd.* But if no deserving person (*mustaḥiqq*) is found at that time, it should be set aside with the intent of giving it at the first opportunity. If the payment is delayed beyond this time despite the presence of a deserving recipient, it remains *wājib* to pay it later, because this obligation is not annulled in any situation.

Mustaḥiqq:

The schools concur that those entitled to receive ordinary *zakāt,* as per the Qur'ānic verse ...إِنَّمَاالصَّدَقَاتُ لِلفُقَراءِ وَالمَسَاكِينَ , are also entitled to receive *zakāt al-fiṭr.*

In the place of paying in kind, it suffices to pay the price of the cereals, and it is *mustaḥabb* to give it to one's needy relative, and then to the neighbours, as there is a tradition which says:

جيرانُ الصَّدَقةِ أَحَقُّ بها.

The neighbour of (someone paying) *ṣadaqah* is more entitled to receive it.

KHUMS:

The Imāmīs assign a separate chapter to *khums* in their books on fiqh, after the chapter on *zakāt,* and its basis is verse 41 of *Sūrat al-'Anfāl:*

وَاعلَمُوٓا أَنَّمَا غَنِمتُم مِّن شَىءٍ فَأَنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِى القُربَىٰ وَاليَتَٰمَىٰ وَالمَسَٰكِينِ وَابنِ السَّبِيلِ...

Know that, whatever booty you take, the fifth of it is God's and the Messenger's, and the near kinsman's and the orphans', and for the needy and the traveller (8:41)

They do not confine the scope of the term *'ghanîmah'* to the spoils of war acquired by Muslims, but consider it to include seven categories, mentioned below along with what information we could gather about the view of other schools regarding each category:

1. Booty acquired in war: All the schools concur that it is liable to *khums.*

2. Minerals: It includes everything that is of value extracted from the earth--apart from soil--e.g. gold, silver, lead, copper, mercury, petroleum, sulfur, etc.

The Imāmīs observe: It is *wājib* to pay *khums* (20%) on minerals if their value reaches the *niṣāb* of gold, which is 20 *dinar*s, or the *niṣāb* of silver, which is 200 *dirham*s. There is no *khums* below this limit.

The Ḥanafīs state: There is no *niṣāb* for minerals, and their *khums* is *wājib* irrespective of value.

The Mālikīs, Shāfi'īs and Ḥanbalīs are of the opinion that there is no levy if the mineral extracted is lesser in value than the *niṣāb,* but if it reaches that limit it is liable to *zakāt* at the rate of 2 1/2%.

3. Rikāz: It consists of articles of value buried at a place whose inhabitants have perished and there is no sign left of them, such as sites which the archeologists escavate for this purpose.

The four schools state: *Khums* is *wājib* on *rikāz,* and it has no *niṣāb* and therefore entails *khums* irrespective of its worth.

The Imāmīs observe: *Rikāz* is like minerals with respect to *niṣāb* and liability to *khums.*

4. The Imāmīs say: That which is retrieved from the sea through diving, e.g. pearls and corals, is liable to *khums* if its value is one *dînar* or more after deducting the cost of retrieval.

In the opinion of the four schools, there is no levy on such things, whatever their value.

5. The Imāmīs observe: *Khums* is *wājib* upon the surplus remaining after a person has made provision for himself and his family for a period of one year, irrespective of his profession and the mode of income--trade or industry, agriculture or office work, or work on daily wages, or real state, gift or something else. Hence if there remains a single piaster or anything of that value after a year's expenditure, it is liable to *khums.*

6. The Imāmīs state: If a person comes to acquire some illegitimate wealth which gets mixed with his legitimate wealth and neither the quantity of the *ḥarām* wealth nor its owner is known, he is obliged to pay *khums* from his whole wealth in the way of God. If he does so, his remaining wealth will become *ḥalāl* irrespective of whether the illegitimate portion was lesser or greater than a fifth. But if the illegitimate wealth is identifiable, it is obligatory to return it itself; and if it is not identifiable but its quantity is known, he will return that quantity fully even if it equals all his wealth. If he knows the people from whom he has embezzled it without knowing the quantity of the portion due to them, he is bound to seek their satisfaction by reaching a settlement or seeking their pardon. In short, the payment of *khums* from adulterated wealth is correct only when both the quantity and the owner of its illegitimate portion are not known.

7. According to the Imāmīs, if a *dhimmî* purchases land from a Muslim, the *dhimmî* is personally liable to pay its *khums.*

Uses of Khums:

The Shāfi'îs and the Ḥanbalîs observe: *Khums* will be divided into five parts, of which one part will be the share of the Prophet (ṣ) and used for the benefit of Muslims. Another part will be the share of *dhawî al-qubrā,* and they are those who have descended from Hāshim through their fathers, irrespective of any distinction between the rich or the poor among them. The three other parts will be spent on orphans, the poor and the travellers, whether they belong to the Banū Hāshim or not.

The Ḥanafîs consider the share of the Prophet (ṣ) as annulled after his demise. As to the *dhawî al-qurbā* (i.e. those belonging to Banū Hāshim), they are like other poor in receiving *khums,* they say; they will be entitled to it on account of their need, not by virtue of their kinship with the Prophet (ṣ).

The Mālikîs state: The ruler (*imām*) has complete authority over *khums* funds and he may use it for any purpose that he deems fit.

According to the Imāmîs, the shares of God, the Prophet (ṣ) and the *dhawî al-qurbā* will be paid to the Imām ('*a*) or his representative, to be spent for the benefit of the Muslim community. The other three parts are to be given to the orphans, destitutes and travellers belonging exclusively to Banū Hāshim.

We conclude this chapter with al-Shi'rānî's words in his *Kitāb al-mîzān* (the chapter on *zakāt al-ma'din*). He says:

> The ruler (*imām*) is authorized to tax the mine owners in accordance with the interest of the public exchequer to avoid the concentration of wealth in the hands of mine owners who may thereby seek political power and spend money on the troops. This would lead to evil (political) consequences (*fasād*).

This is another way of expressing the "modern" view that capital enables the capitalists to gain control of the government. 406 years have passed since the death of the author of this opinion.

NOTES:

1. Except that sanity and adulthood are not considered essential for liability to *zakāt* on crops of the field and fruits in the opinion of the Ḥanafīs.

2. The Ḥanafīs observe: The number of cows between the two limits is exempt from *zakāt* except when their number is between 40 and 60. After 40, *zakāt* will be levied on each extra cow at the rate of 2 1/2% of a *musinnah* (*al-Fiqh 'alā al-madhāhib al-'arba'ah,* "Bāb al-Zakāt").